

§ 4.1368

decision granting or denying such temporary relief. Temporary relief may be granted only if—

(1) All parties to the proceeding have been notified and given an opportunity to be heard on a request for temporary relief;

(2) The person requesting such relief shows a substantial likelihood of prevailing on the merits of the final determination of the proceeding; and

(3) Such relief will not adversely affect the public health or safety or cause significant, imminent environmental harm to land, air, or water resources.

(f) Appeals of temporary relief decisions.

(1) Any party desiring to appeal the decision of the Administrative Law Judge granting or denying temporary relief may appeal to the Board, or, in the alternative, may seek judicial review pursuant to section 526(a), 30 U.S.C. 1276(a), of the Act.

(2) The Board shall issue an expedited briefing schedule and shall issue a decision on the appeal expeditiously.

§ 4.1368 Determination by the Administrative Law Judge.

Unless all parties agree in writing to an extension or waiver, the Administrative Law Judge shall issue a written decision in accordance with § 4.1127 within 30 days of the date the hearing record is closed by the Administrative Law Judge. An agreement to waive the time limit for issuing a decision may specify the length of the extension agreed to.

§ 4.1369 Petition for discretionary review; judicial review.

(a) Any party aggrieved by a decision of an Administrative Law Judge may file a petition for discretionary review with the Board within 30 days of receipt of the decision or, in the alternative, may seek judicial review in accordance with 30 U.S.C. 1276(a)(2) (1982). A copy of the petition shall be served simultaneously on the Administrative Law Judge who issued the decision, who shall forthwith forward the record to the Board, and on all other parties to the proceeding.

43 CFR Subtitle A (10–1–01 Edition)

(b) The petition shall set forth specifically the alleged errors in the decision, with supporting argument, and shall attach a copy of the decision.

(c) Any party may file a response to a petition for discretionary review within 20 days of receipt of the petition.

(d) The Board shall issue a decision denying the petition or granting the petition and deciding the merits within 60 days of the deadline for filing responses.

REVIEW OF DECISIONS OF THE OFFICE OF SURFACE MINING SUSPENDING OR RESCINDING IMPROVIDENTLY ISSUED PERMITS

SOURCE: 59 FR 54326, Oct. 28, 1994, unless otherwise noted.

§ 4.1370 Scope.

Sections 4.1370 through 4.1377 govern the procedures for review of notices from OSM of suspension of improvidently issued permits issued under 30 CFR 773.20(c) or of notices of proposed suspension and rescission of improvidently issued permits issued under 30 CFR 773.21.

§ 4.1371 Who may file, where to file, when to file.

(a) A permittee that is served with a notice of suspension under 30 CFR 773.20(c)(2) or a notice of proposed suspension and rescission under 30 CFR 773.21 may file a request for review with the Hearings Division, Office of Hearings and Appeals, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203 (Telephone 703-235-3800) within 30 days of service of the notice.

(b) Failure to file a request for review within 30 days of service of the notice shall constitute a waiver of review of the notice. An untimely request for review shall be dismissed.

(c) Where appropriate under the Administrative Dispute Resolution Act, 5 U.S.C. §§ 571–583, the Hearings Division may use a dispute resolution proceeding, if the parties agree to such proceeding, before the procedures set forth in §§ 4.1373 through 4.1377.